



National Audubon Society

California Legislative Affairs Office

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April 22, 1993

Mr. Brian Parker
Solano County Department of Environmental Management
601 Texas Street
Fairfield, CA 94533

RE: Solano County Compliance with SB 1866 (Johnston) Delta Protection Act of 1992

Dear Mr. Parker:

The National Audubon Society is concerned about the approval process for the Decker Island sand mining and extraction project proposed by Mega Sand Inc. (Use Permit App. No. U-92-24). Unfortunately, we did not have an opportunity to comment during the public review period for your proposed Negative Declaration for the project. However, rather than focusing on the California Environmental Quality Act (CEQA) process and requirements, we would like to bring to your attention the new requirements of the Delta Protection Act of 1992 (hereinafter "the Act").

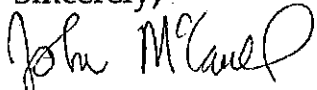
The National Audubon Society played an integral role in the drafting and passage of SB 1866 (Public Resources Code §29700 et seq.), and we believe that the Decker Island/Mega Sand project is the first test case of some of the key provisions of this law. Initially, we believe that the Mega Sand mining operation fits within the definition of "Development" in §29723 of the Delta Protection Act ("Development means...grading, removing, dredging, mining or extraction of any materials...").

Because the Delta Protection Commission is still in the process of getting organized, they have not yet prepared the Resource Management Plan for the "Primary Zone" as required by Chapter 5, Section 29760 of the Act. Prior to adoption of the Resource Management Plan, approval of any "Development" within the Primary Zone by a local government must first meet the findings requirements of §29765 of the Act.

Section 29765 requires a set of written findings based on substantial evidence in the record before local government approval of development within the primary zone. Any person may also appeal the decision of a local government "in implementing the regional plan or otherwise taken pursuant to this division..."

In this case, we believe the law is clear that any person can challenge the §29765 findings of Solano County in regards to the Mega Sand project if the findings "are inconsistent" with the requirements of the Delta Protection Act. Several of local, Delta-area Audubon Society chapters are working closely with Solano County in regards to the Mega Sand proposal and Draft Negative Declaration. We will closely monitor the §29765 findings produced by the County, and if necessary appeal the County's written decision to this Commission. Thank you for your consideration of this important issue.

Sincerely,

A handwritten signature in dark ink, appearing to read "John McCaull". The signature is fluid and cursive, with the first name "John" and last name "McCaull" clearly distinguishable.

John McCaull
California Legislative Director

C.C. Members of the Delta Protection Commission, Senator Patrick Johnston